

ARGUMENTS/REMARKS

Claims 2, 3, 6 through 9, 12 through 16, 18 through 21 and 61 through 69 are presently pending in the present application. Claims 1, 4, 5, 22, 26, 27, 30 through 33, 37 through 45, 47, 51, 54, 57 and 58 have been withdrawn from consideration as being directed to a non-elected invention. Claim 2, 3, 7, and 13 have been amended. Claims 61 through 69 are new.

In the Office Action, claims 2, 3, 6, 7, 8, 9, 12, 13, 18, 19, 20 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,548,907 to Seitz et al. (Seitz) and U.S. Patent No. 6,300,638 to Groger et al. (Groger). Applicants respectfully disagree.

Independent claim 2 now provides for a fluid analyser system comprising including a receptacle(s) for the collection of a fluid sample and; an analysis apparatus containing a consistent light condition compartment into which the receptacle containing the fluid sample may be placed; means external to the receptacle to provide an excitation discharge within the consistent light condition compartment for activating the molecules within the sample; means for detecting the radiation emitted by the sample and for generating a signal indicative of said radiation emitted; and means for magnifying the signal. The receptacle is provided with pinholes covered by metallic contacts to be positioned against the means to provide the discharge to control the discharge through the sample when the receptacle is positioned within the consistent light condition compartment for analysis

The amendments find support in the specification at page 6 lines 20 and 21 and lines 36. The pinholes in the receptacle that are covered by metallic contacts are find support at page 10, lines 28 through 32 (Figures 2A and 8).

Neither of the references cited (Seitz or Grosser) disclose the use of a receptacle that is provided with pin holes covered by metallic contacts to direct a discharge that activates the molecules in the sample for analysis and the claims are therefore novel.

The Seitz reference (US 4548907) employs a fluorophor which is immersed in the liquid sample to be analysed (see the paragraph bridging columns 3 and 4). The analysis is therefore invasive and different from the analysis performed in this

invention. The Seitz technology requires that a fluorophor be immersed in a sample to be analysed and that the fluorophor be excited at first and second wavelengths to perform the analysis.

In applicants invention it is essential that the excitation device be external to the sample receptacle. *Seitz could not function if the fluorophor was external to the sample to be analyzed.*

Grosser (US 6300638) measures the changes in fluorescence due to the interaction of the analyte and a dye/polymer probe (see column 10 lines 51 and 52) and the excitation is provided by a laser beam which is reflected within the flowcell ((9 in Figure 1) .This is also an invasive technique for analysing flowing vapour (see Vapor In and Vapor out in Figure 1) and does not suggest the use of a receptacle provided with pinholes covered by contacts for non-invasive analysis.

Accordingly any combination of Seitz and Grosser results in systems in which the device which provides the radiation *is in contact with and within the sample of the materials to be analysed.* Thus, this combination of patents does not and cannot make obvious the claimed invention.

In the Office Action, claims 14 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz in view of Groger and further in view of U.S. patent No. 3,854,050 to Peterson et al. (Peterson). Applicants respectfully disagree.

The Peterson patent does not remedy the defects of either the Seitz or Groger patents.

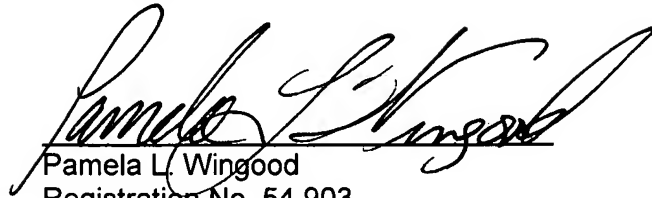
Dependent claim 16 is also not made obvious by the cited combination of references because of the reasons set forth above.

New claims 61 through 69 that depend from independent claim 2 are also not allowable for at least the reasons set forth above with respect to independent claim 2.

If for any reason the Examiner feels that consultation with would be helpful, in the advancement of the prosecution, the Examiner is invited to contact the Applicants' attorney at the number below.

Respectfully submitted,

April 24, 2009

A handwritten signature in black ink, appearing to read "Pamela L. Wingood", written over a horizontal line.

Pamela L. Wingood

Registration No. 54,903

Attorney for Applicant(s)

Ohlandt, Greeley, Ruggiero & Perle, L.L.P.

One Landmark Square, 10th floor

Stamford, CT 06901-2682

Tel: (203) 327-4500

Fax: (203) 327-6401